

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR
MONTGOMERY COUNTY, MARYLAND**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660/fax (240) 777-6665
<http://www.montgomerycountymd.gov/ozah>**

LOCAL MAP AMENDMENT APPLICATION NO. H-117

ORDER GRANTING WITHDRAWAL OF APPLICATION & CANCELLING HEARING

OPINION

This matter concerns the Applicant's request to withdraw its rezoning application. The subject site is located at 10405 Old Georgetown Road in Bethesda, consisting of 3.497 acres in the 7th Election District. The subject site is situated on the eastern side of Old Georgetown Road (MD Route 187), just north of its intersection with Democracy Boulevard. The site is described as Lot N-541, Wildwood Manor Shopping Center Subdivision, and it bears the Tax Account Number 07-03669303. Zoning litigation regarding the site dates back a number of years.

On November 27, 2007, the Council adopted Resolution 16-392, approving Local Map Amendment G-851, and its related Schematic Development Plan (SDP).

On January 22, 2013, the Council adopted Resolution 17-653, approving an amendment (SDPA 12-01) to the Schematic Development Plan. SDPA 12-01 had contemplated construction of a five (5) story building containing fifty-eight (58) dwelling units. The residential use in the O-M office zone was authorized by Special Exception No. S-2830, granted by the County Board of Appeals under provisions in the Zoning Ordinance allowing "productivity housing" in commercial zones.

On December 1, 2015, Wildwood Medical Center, LLC, filed SDPA 16-01, an application to amend SDPA 12-01, based on Sectional Map Amendment No G-956, which rezoned the subject property from the O-M Zone to the CRT (Commercial-Residential Town) Zone, specifically, CRT 1.25, C0.5, R-0.75, H-50. The Applicant filed SDPA 16-01 to take advantage of additional development possibilities under the new zone; however, after consulting with Technical Staff of the Planning Department, Applicant decided that it would require a further rezoning, rather than merely an amendment of the SDP, to accomplish its ends.

It therefore filed a motion to withdraw SDPA 16-01 on July 27, 2016.

On the same day as it withdrew SDPA 16-01, the Applicant filed the subject rezoning application (H-117), covering the same property as encompassed by SDPA 16-01. The new rezoning application, as later amended, sought to reclassify the subject site from the current CRT-1.25, C-0.5, R-0.75, H-50 Zone to the CRTF-1.25, C-0.5, R-0.75, H-60 Zone, a floating zone with flexibility to raise the height of the buildings to 60 feet.

On February 6, 2017, Technical Staff issued a report recommending denial of the application (Exhibit 44). On February 24, 2017, the Planning Board voted that the application should be approved only if the building height was not increased beyond 50 feet and certain binding elements were added to the plans (Exhibit 45). On March 30, 2017, the Applicant moved to continue the hearing so that it could pursue further negotiations with the community. On April 7, 2017, OZAH issued notice continuing the hearing to June 9, 2017 (Exhibit 48).

On May 10, 2017, the Applicant filed a letter (Exhibit 50) stating:

Pursuant to Section 59.7.2.1.DA of the Zoning Ordinance, the Applicant in the above referenced matter, Wildwood Medical Center, LLC, hereby withdraws Local Map Amendment Application No. H-117.

Although the letter indicates that the application is withdrawn by the Applicant, the Zoning Ordinance requires that the Hearing Examiner act on any withdrawal request. Specifically, Section 59.7.2.1.D.4 of the 2014 Zoning Ordinance provides:

4. Withdrawal of Application

The Hearing Examiner may allow an applicant to withdraw an application for a Local Map Amendment at any time before the Hearing Examiner issues the report.

Because the Hearing Examiner has not yet issued his report, nor even held a hearing, the request to withdraw LMA H-117 will be granted.

ACTION

Therefore, it is, this 15th day of May, 2017, ORDERED that:

1. Withdrawal of Local Map Amendment Application No. H-117 is hereby approved;
2. LMA Application H-117 is hereby dismissed; and
2. The previously noticed hearing in this case, set for June 9, 2017, is hereby cancelled.



Martin L. Grossman
Hearing Examiner and Director
Office of Zoning and Administrative Hearings

Copy of Order forwarded this 15th day of May, 2017, to:

Applicant and Counsel
All Parties of record

Abutting and confronting property owners (or a condominium's council of unit owners, if applicable)
Any municipality within a half mile of the site
Registered Civic, Homeowners and Renters Associations within a half mile of the site
Gwen Wright, M-NCPPC Planning Director
Emily Tettelbaum, M-NCPPC
Montgomery County Public Schools (MCPS)
Washington Area Transit Authority (Metro)
Washington Suburban Sanitary Commission (WSSC)
Montgomery County Department of Permitting Services
Jeff Zyontz, Legislative Attorney, Montgomery County Council